

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
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Inquiry Concerning High-Speed Access to	)	GEN Docket No. 00-185
the Internet over Cable and Other	)	
Facilities	)	

**COMMENTS OF CENTURYTEL, INC.**

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following comments in connection with the above-captioned Notice of Inquiry ("Notice") released September 28, 2000.<sup>1</sup> In the Notice, the Commission seeks comment on whether a uniform regulatory framework should apply to all providers of high-speed Internet access.<sup>2</sup>

**I. Summary**

In these comments, CenturyTel urges the Commission to ease the regulatory burden its rules place on broadband Internet access offered by telecommunications carriers using Digital Subscriber Line ("DSL") and other new technologies. Broadband Internet access delivered using a cable modem platform is far more widely available than DSL, far more established in the market, and is offered by cable operators on a virtually unregulated basis. Given these facts, there is no justification for continuing to impose dominant carrier regulation on DSL service offered by rural ILECs (such as CenturyTel) that are making substantial investments in DSL technology to bring broadband Internet access to rural America.

To encourage high-speed Internet access investment in rural America, the Commission should:

<sup>1</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GEN Docket No. 00-185, Notice of Inquiry, FCC 00-355 (rel. Sept. 28, 2000).

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- ◆ Eliminate regulatory burdens for ILECs, so that they can compete effectively with cable operators in these markets;
- ◆ Require all telecommunications carriers to contribute to universal service support mechanisms on the same basis; and
- ◆ Work with the Federal-State Joint Board on Universal Service (Joint Board) to add high-speed Internet access to the list of services supported by federal universal service support mechanisms.

## **II. Background**

CenturyTel, headquartered in Monroe, Louisiana, is a leader in providing integrated communications services to rural markets. CenturyTel provides a variety of high-quality communications services to more than 2.8 million customers in rural communities in 21 states, including local exchange and advanced services, wireless cellular telephone service, personal communications services ("PCS"), long distance, security monitoring, data, information services, and broad-band and dial-up Internet access services. CenturyTel's rural exchanges provide local exchange service to 1.7 million access lines, but approximately half of its exchanges have fewer than 1,000 access lines each. Very few of its exchanges have greater than 10,000 access lines. All of CenturyTel's operating companies meet the statutory definition of a "rural telephone company" contained in Section 3 of the Communications Act of 1934, as amended (the "Communications Act").<sup>3</sup>

CenturyTel has embarked on an aggressive campaign to bring DSL service to its customers in rural and small communities across America. As of September 30, 2000, CenturyTel was providing DSL service to 26 percent of its local exchange customers, excluding newly-acquired lines in Arkansas, Missouri, and Wisconsin. CenturyTel is continuing to roll out

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<sup>2</sup> Notice at paras. 43-45.

<sup>3</sup> 47 U.S.C. § 153(37).

DSL in new areas every day, and expects this figure to double within a matter of months.

CenturyTel's commitment to delivering high-speed Internet and other broadband services to rural America is actual, obvious, and underway.

### **III. Commission Policies Should Encourage the Deployment of High-Speed Internet Access Facilities in Rural Areas.**

It is virtually beyond argument that deployment of high-speed Internet access facilities, particularly to rural America, is in the public interest. Section 706 of the Telecommunications Act of 1996 (the "1996 Act") specifically states, "[t]he Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing . . . price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulatory methods that remove barriers to infrastructure investment."<sup>4</sup> Numerous policymakers and independent researchers have enunciated the greater need for broadband services in rural and small urban communities, as well as the greater challenge of delivering such services to those communities.<sup>5</sup>

The Commission's policies today do not advance the objective of Section 706. Cable penetration today exceeds 96 percent of all television homes,<sup>6</sup> with virtually all of this

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<sup>4</sup> 47 U.S.C. § 157 nt.

<sup>5</sup> See, e.g. *Advanced Telecommunications in Rural America: The Challenge of Bringing Broadband Service to All Americans*, National Telecommunications and Information Administration and Rural Utilities Service, Joint Project (Report rel. Apr., 2000).

<sup>6</sup> *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 99-230, Sixth Annual Report, FCC 99-418 (rel. Jan. 14, 2000), at para. 19.

plant already providing or capable of providing cable modem service.<sup>7</sup> The Commission has recognized that "[t]his contrasts with DSL technologies, where variations in legacy outside plant conditions can limit access to certain end-users even in upgraded areas."<sup>8</sup> These technical difficulties, coupled with the additional regulatory burdens placed on DSL providers, hinder the deployment of DSL in rural areas. Wireless alternatives, while promising, are not widely available or, in some cases, practical in rural and small urban markets, and rely on line-of-sight communications to function.<sup>9</sup> Cable dominance in this market, nationwide, does not guarantee that rural markets are being served.<sup>10</sup> The Commission can and should do more to permit and promote deployment of competing technologies, such as DSL, to the neediest consumers – rural consumers.

#### **IV. The Market, Not Regulators, Should Choose Which Technologies to Support.**

##### **A. Cable Broadband Operators Share None of the Burdens Assumed by ILECs in Deploying Internet and Other High-Speed Services to Rural Areas.**

Cable providers and ILECs alike are making great investments in upgrades to deliver high-speed Internet access using their respective facilities.<sup>11</sup> Yet, cable modem platforms account for the vast majority of high-speed Internet access in use today,<sup>12</sup> with cable broadband

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<sup>7</sup> *Inquiry Concerning the Deployment of Advanced Telecommunication Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, FCC 00-290 (rel. Aug. 21, 2000), at paras. 30-31 (*Second 706 Report*) (discussing required upgrades to cable television system and contrasting to difficulties faced by DSL and wireless providers).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; General Accounting Office, *Technological and Regulatory Factors Affecting Consumer Choice of Internet Providers*, GAO-01-93 (October, 2000), at 47.

<sup>10</sup> *Second 706 Report* at Appendix B, Figure D (showing that high-speed Internet access penetration declines rapidly in less-densely populated areas of the Nation.)

<sup>11</sup> *Id.* at paras. 185-196.

<sup>12</sup> *Id.*, at Appendix B, Figure B (nationwide, 44 cable broadband providers vs. 28 DSL providers), Figure C (nationwide, approximately four times as many cable broadband lines as DSL lines).

controlling more than 70 percent of the market for residential broadband.<sup>13</sup> This is due, in large measure, to the fact that cable modem providers are permitted to operate with few regulatory restrictions. Their video and Internet businesses are vertically-integrated and, in many cases, they own the transmission facilities, Internet service provider, and content providers used to deliver an integrated package of services to the end-user. The Commission's regulatory policies require ILECs to offer DSL on a nondiscriminatory basis to all affiliated and unaffiliated ISPs, while functionally-equivalent cable modem service providers no similar obligations. More importantly, the Commission continues to impose dominant-carrier regulation on ILEC-provided DSL services, requiring unbundling, line-sharing, and regulated pricing, and preventing the offering of volume and term discounts and deaveraging of rates. In rural areas, these additional regulatory burdens make it more difficult for ILECs to make prudent business decision regarding the timing and method of market entry and DSL technology investments.

In addition, unlike cable modem platform providers, ILECs must contribute substantial revenues to federal and state universal service support mechanisms. Federal contributions alone are currently 5.6688 percent of interstate end-user telecommunications revenues.<sup>14</sup> Unlike ILECs, cable modem providers function largely without oversight as to their investments, revenues, rate-of-return, operations, and service offerings.<sup>15</sup>

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<sup>13</sup> *Id.* at para. 190.

<sup>14</sup> Public Notice, CC Docket No. 96-45, Proposed Fourth Quarter 2000 Universal Service Contribution Factor, DA 00-2065 (rel. Sept. 8, 2000).

<sup>15</sup> Although franchise authorities may impose fees on cable operators, the Ninth Circuit's recent decision that cable broadband is not subject to local franchising (*see, infra*, note 22) will undoubtedly result in cable operators seeking to exclude those revenues from franchise fee payments. News reports confirm that this process has already begun. *See Communications Daily, Cox to Cease Paying Franchise Fees for Cable Modem Service* (Nov. 21, 2000), at 3.

As a result of the additional regulatory burdens placed on ILECs, cable modem providers enjoy an advantage in the high-speed Internet access market based solely on their unregulated status. This lack of regulation creates considerable costs savings for these providers, and gives them much greater flexibility in operating their businesses. In addition, as the first to invest in high-speed Internet infrastructure upgrades (no federal approval was required of their rates, rate structure, or investment plans), cable operators enjoy a substantial head-start in the deployment of these services. Without an easing of the regulatory burden on ILECs, the already-steep slope toward competition with these cable incumbents will grow even steeper.

**B. The Commission Should Eliminate Regulatory Burdens on ILECs So that They Can Compete Effectively with Cable Operators in the High-Speed Internet Access Market.**

To promote the deployment of broadband Internet access in rural areas, the Commission should immediately reduce or eliminate dominant carrier regulatory burdens imposed on ILECs, as they relate to the provision of DSL. Specifically, the Commission should: (1) declare that rural ILECs are non-dominant in their provision of in-region broadband Internet access service; (2) forbear from federal DSL tariffing obligations, including the requirement to submit cost support, for new services such as DSL; or (3) permit deaveraging of rates and volume and term discounts to wholesale and retail purchasers of DSL.

*Non-dominant treatment.* The Commission should declare rural ILECs are non-dominant in the provision of broadband Internet access services. As noted above, this is a new market with many new entrants currently dominated, when there are multiple providers, by the cable operators. There is no evidence that the ILECs have any market power in this rapidly-growing sector. Just as the Commission, having found that the interexchange market is substantially competitive, declared that ILECs could be permitted to provide interexchange

services without being subject to dominant carrier regulation, the Commission has no justification to regulate ILECs as dominant in the broadband market.<sup>16</sup> The case for non-dominant treatment is even stronger here than it was in the interexchange context. Unlike that case, a cable operator can provide cable modem service entirely independently from the ILEC, without using any ILEC facilities to do so. Accordingly, the ILEC in the broadband market has no ability whatsoever to leverage its local exchange bottleneck.

*Tariffing.* Federal tariffing of DSL services is costly, in both a direct and an indirect sense. The preparation of the tariff itself, including the proper cost support required of a rate-of-return carrier, is an ambitious project and the tariff, once generated, is subject to suspension and investigation by the Commission. Current tariffing procedures hamstring ILECs in that, in CenturyTel's experience, it can take up to eight weeks to implement tariff changes to properly bill for new services, including development of cost support, drafting of tariff revisions, and obtaining tariff effectiveness. In addition, as the Commission has recognized in the interstate, interexchange market, tariffing of competitive services can actually do more harm than good, as competitors are then freely able to act with perfect knowledge of the prices charged by the competition.<sup>17</sup> In the worst case, presented here, cable operators are able to inspect ILEC tariffs and anticipate new ILEC service offerings, while ILECs do not have access to similar competitive information.

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<sup>16</sup> *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LECs' Local Exchange Area*, CC Docket No. 96-149, Second Report and Order, FCC 97-142 (rel. Apr. 18, 1997), at para. 143 (declaring LECs non-dominant in the provision of in-region, interexchange services, so long as they comply with the separation requirements of the *Competitive Carrier Fifth Report and Order*, 98 F.C.C.2d 1191 (1984)).

<sup>17</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20744 (1996), *aff'd sub nom. MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C.Cir. 2000).

*Rate deaveraging and volume and term discounts.* If the Commission does not adopt the reforms suggested above, at the very least, it should permit ILECs to deaverage DSL rates and offer volume and term discounts to wholesale and retail DSL customers, without a waiver of the Commission's rules. These forms of pricing flexibility will permit DSL rates to reflect costs, and encourage DSL deployment in higher-cost, rural areas that might otherwise be bypassed. Today, despite the fact that cable operators, and not DSL providers, control the vast majority of the market, the Commission regulates only the ILECs' rates. Cable operators are free to structure their rates and service offerings any way they choose. By permitting ILECs similar freedom, the Commission will promote expanded and more rapid offering of DSL services. The Commission has frequently granted carriers the flexibility to offer volume and term discounts as a first step toward deregulation of a market where competition is growing.<sup>18</sup>

These regulatory changes, much more than mandatory open access, will produce substantial growth in broadband deployment in rural areas. By easing the regulatory restrictions which discourage ILEC investment in new infrastructure in competition with cable modem platforms, the Commission will promote more vigorous, facilities-based competition, which will benefit consumers and independent ISPs alike.

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<sup>18</sup> See, e.g., *Expanded Interconnection with Local Telephone Company Facilities; Amendment of the Part 69 Allocation of General Support Facility Costs*, CC Docket Nos. 91-141 and 92-333, Report and Order, 7 FCC Rcd 7369, 7463 (1992), *vacated in part and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994) (special access); *Switched Transport Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7435 (1993) (switched access); *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, FCC 99-206 (1999), at paras. 122-127; *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, Order, FCC 00-379 (rel. Oct. 26, 2000).



**C. The Commission Should Require Cable Broadband Providers Classified as Telecommunications Carriers to Contribute to Universal Service on the Same Basis as Other Carriers.**

CenturyTel strongly supports the Petition for Declaratory Ruling filed by the United States Telecom Association and incorporated into this docket to the extent that it asks the Commission to treat cable modem service providers classified as telecommunications carriers like other, similarly-situated carriers for purposes of federal universal service contributions.<sup>19</sup> Section 254(d) of the Communications Act provides,

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanism established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be *de minimis*. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.<sup>20</sup>

Implementing this section, the Commission has required all providers of interstate telecommunications to contribute a percentage of their interstate, end-user, telecommunications revenues to this mechanism, subject only to exceptions for carriers whose contributions would be *de minimis* or those with predominantly international, and not domestic, interstate revenues.<sup>21</sup>

Recently, the United States Court of Appeals for the Ninth Circuit squarely held that, "[t]he Communications Act includes cable broadband transmission as one of the

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<sup>19</sup> United States Telecom Association, Universal Service Contribution Obligations of Cable Operators that Provide Telecommunications Services, Petition for Declaratory Ruling (filed Sept. 26, 2000).

<sup>20</sup> 47 U.S.C. § 254(d).

<sup>21</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9173; *Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket 96-45, and Sixth Report and Order in CC Docket 96-262, FCC 99-290 (rel. Oct. 8, 2000), at paras. 19-20.

'telecommunications services' a cable operator may provide over its cable systems."<sup>22</sup>

Accordingly, the Court specifically found that AT&T's provision of broadband Internet access over its cable platform constituted provision of a telecommunications service, as defined in the Communications Act. Given this clear and unambiguous holding, Section 254 requires such providers of cable broadband service to contribute to federal universal service support mechanisms based on their end-user revenues derived from such service.

**V. The Commission Should Add Broadband Internet Access to the List of Services Supported By Federal Universal Service Support Mechanisms.**

In order to ensure that high-speed Internet access is available at affordable and reasonably comparable rates in urban and rural areas alike, CenturyTel supports the recommendation of the Rural Task Force that the advanced and information services be added to the list of services supported by federal universal service support mechanisms.<sup>23</sup> Section 254(c) recognizes that universal service "is an evolving concept that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies," in accordance with the criteria set forth in the statute.<sup>24</sup> As high-speed Internet access becomes more essential to education, public health, and public safety, more widely subscribed-to, and more widely-deployed, it is incumbent on the Commission to bring these services within the list of supported services.

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<sup>22</sup> *AT&T v. City of Portland*, 231 F.3d 871, 878 (9<sup>th</sup> Cir. 2000).

<sup>23</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (re. Sept. 29, 2000), at pp. 22-23.

<sup>24</sup> 47 U.S.C. § 254(c).

**VI. Conclusion.**

For the reasons set forth herein, CenturyTel believes that the Commission should forbear from regulation of LEC DSL services, assess LEC and cable broadband offerings similarly under the universal service rules, and permit all eligible telecommunications carriers, including cable modem service providers who so qualify, to obtain universal service support for extending broadband service to rural and high-cost areas.

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